

STATE OF MICHIGAN
COURT OF APPEALS

MARTHA LOUISE HOBBY, f/k/a
MARTHA ARLT,

Plaintiff-Appellee,

v

GENE EDWARD ARLT,

Defendant-Appellee,

UNPUBLISHED
September 23, 2010

No. 291923
Livingston Circuit Court
Family Division
LC No. 00-030305-DM

Before: BORRELLO, P.J., JANSEN and BANDSTRA, JJ.

PER CURIAM.

Defendant appeals as of right the March 5, 2009 and April 23, 2009 circuit court orders awarding attorney fees and costs to plaintiff. We affirm.

The parties were divorced in September 2001. At the time of the divorce, the parties had three minor children; at the time of the proceedings underlying the instant appeal, one child was still a minor. The parties have had a number of custody disputes since entry of the judgment, necessitating numerous hearings before the Friend of the Court (FOC) referee. During the summer of 2008, defendant moved for a change of custody of the parties' minor child. The FOC referee recommended that defendant's motion be denied; defendant did not object to that recommendation, and the court denied his motion. Defendant then filed a request for rehearing, and for an emergency evidentiary hearing, regarding custody. The FOC referee again recommended that defendant's motion be denied; the referee also recommended that attorney fees be awarded to plaintiff in the amount of \$1,800. Defendant filed his objections to the referee's recommendations. The circuit court, by order entered December 3, 2008, denied defendant's objections and awarded plaintiff \$250 in attorney fees, which defendant timely paid. Then, on December 29, 2008, the circuit court adopted the FOC October 9, 2008 proposed order, including the assessment of \$1,800 in attorney fees against defendant. Plaintiff subsequently moved for entry of a money judgment for the unpaid attorney fees together with additional fees incurred in bringing the motion. On March 5, 2009, the circuit court heard and granted that motion, at which time a money judgment was entered against defendant in the amount of \$2,300.

Thereafter, defendant filed his objection to the court's orders imposing attorney fees against him, and asserting, based on his memory of the prior proceedings, that he was required to pay only \$250, which he had done. Defendant further claimed that the transcript of the

November 20, 2008 circuit court hearing was inaccurate and asserted that, if he was provided access to the videotape, he would be able to demonstrate the discrepancies. The court took a recess so that plaintiff's counsel and defendant could watch the videotape of the November 20th hearing and compare it with the transcript, after which defendant acknowledged that there were no major discrepancies between the videotape and the transcript. The circuit court denied defendant's objection and granted plaintiff additional attorney fees in the sum of \$1,575.

On appeal, defendant asserts that the videotape of the November 20, 2008 circuit court hearing has been "edited, altered and falsified,"—that is, that certain words have been deleted from the videotape and that a phrase has been inserted – that the circuit court failed to "fairly and independently" consider this claim, and that that he has been denied an opportunity to obtain the evidence necessary to prove this claim—namely, the videotape. However, as noted above, defendant was afforded the opportunity by the circuit court to review the videotape and transcript with plaintiff's counsel and, after doing so, he acknowledged that, except for a few minor and insignificant discrepancies, the transcript was accurate; defendant did not indicate that there were any incongruities in the videotape, or that it otherwise appeared suspicious or altered in any respect. Defendant offers nothing to substantiate his claim that the videotape is not a valid and authentic recording of the proceeding before the court. The circuit court did not need to review the videotape or to give further consideration to this issue because defendant himself admitted that there were no major discrepancies between the video and the transcript, and defendant did not indicate any issue with regard to the authenticity or validity of the videotape at that time. Therefore, defendant's claims that he was denied a fair hearing with respect to this issue lack merit.

Defendant also asserts that the circuit court failed to consider his claims that the proposed order submitted by plaintiff and adopted by the court on December 3, 2008, contained various inaccuracies and that he did not have an opportunity to review it before it was entered. Defendant argues that the proposed order's reference to adopting the FOC referee's recommendations was ambiguous and misleading. However, defendant's claim in this regard is disingenuous, as the order clearly states that "[t]he Referee's recommended Order Adopting Friend of the Court Referee Recommendation is approved and adopted as the Order of the Court." Further, that order simply and accurately effectuated the circuit court's determinations, made on the record at the November 20, 2008 hearing. No relief is warranted.

Next, defendant argues that the circuit court did not properly consider his assertion that he did not receive notice of the referee's recommendation. Defendant claimed before the circuit court that plaintiff's counsel "submitted the referee report," and that he had not received notice that it had been submitted or that the FOC referee had awarded an additional \$1,800 in attorney fees to plaintiff until plaintiff's counsel sent defendant a "threatening" letter, apparently in February 2009. However, it is clear from the record that defendant was present at the hearing during which the FOC referee very clearly granted plaintiff's request for \$1,800 in attorney fees. Thus, even if defendant did not receive a copy of the referee's proposed order, he was aware of the referee's recommendation. Therefore, defendant is not entitled to relief on this issue.

Finally, defendant claims that plaintiff's counsel engaged in frivolous legal action by filing motions for attorney fees because, according to defendant, the facts underlying plaintiff's position are "known to be untrue." Again, defendant's claims are entirely without merit. According to defendant, plaintiff's counsel colluded with an FOC employee or employees to

edit, alter, or falsify portions of the videotape of the November 20, 2008 hearing before the circuit court. However, as already noted, there is nothing on record here to substantiate these claims. Moreover, there is nothing in the record to suggest that plaintiff's counsel acted improperly in bringing motions against defendant for attorney fees. Rather, the lower court properly found that defendant's actions warranted the award of fees on multiple occasions.

We affirm. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Richard A. Bandstra